Nadarajah & Anor v Golf Resort (M) Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R8–25–56–90
EUSOFF CHIN J
19 JUNE 1991

Labour Law *— Unfair dismissal — Application for certiorari to quash decision of Industrial Court — Claim by employees that they were dismissed without just cause — Acceptance of compensation and signing of settlement documents by employees — Whether settlement signed only by employees could be tendered in Industrial Court — Procedural requirement for signing of settlement document — Whether Industrial Court erred in accepting respondent's preliminary objection that applicants were estopped — Whether technical rule of estoppel applies in industrial adjudication — Industrial Relations Act 1967 ss 20(2), 30(5), 54(2) & Part VII*

Three workmen made a representation to the Director General of Industrial Relations ('DGIR') under s 20(1) of the Industrial Relations Act 1967 ('the Act') claiming that they were dismissed without just cause by their employer ('the respondent'). While the DGIR was taking steps to bring about a settlement, the respondent called the three workmen to its office where the respondent offered compensation to them. The respondent alleged that the workmen accepted its offer. The workmen signed documents stating that they would not make any further claims on the respondent. The workmen, however, alleged that they were forced to accept the compensation and they had orally protested when asked to sign the documents. They further claimed that they wrote to the respondent saying that they accepted the payment of compensation under protest. The DGIR, nonetheless, submitted his report to the Minister who referred the representation to the Industrial Court. At the hearing of the reference, only two of the workmen ('the applicants') were present. The respondent raised a preliminary objection stating that since the applicants had accepted compensation, estoppel operated to stop them from proceeding with their claims. The Industrial Court upheld the respondent's preliminary objection and dismissed the applicants' claim. The applicants applied to the High Court for a certiorari to quash the Industrial Court's decision and for a mandamus directing the Industrial Court to hear their representation as referred to it by the Minister.

Held, allowing the application:

(1) Had there been a genuine settlement reached while the dispute was being dealt with by the DGIR under s 20(2) of the Act, the legal requirement is that both parties to the dispute must sign a statement stating what they had agreed to. It is not sufficient that only one party signed the statement, as happened in this case.

(2) There must be evidence to show that such agreed settlement was the result of the steps taken by the DGIR to effect an amicable settlement. Under s 54(2) of the Act, the settlement has to be

signed before the DGIR whose duty is to see that the settlement has been reached fairly and the parties have signed the document voluntarily. In the circumstances, the documents which were signed only by the workmen could not legally be tendered to the Industrial Court.

(3) An examination of Part VII of the Act shows that the procedures to be followed by the Industrial Court are not those which are strictly applicable to a court of law as laid down in the Evidence Act 1950. Under s 30(5) of the Act, the Industrial Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form. Technical rules such as estoppel, limitation, laches and acquiescence unless otherwise provided for in the Act, have no place in industrial adjudication and should not be allowed to be invoked for defeating just and proper claims.

(4) The Industrial Court had therefore committed an error of law affecting its jurisdiction by upholding the respondent's preliminary objection on a technical plea of estoppel.

[Bahasa Malaysia summary

Tiga orang pekerja telah membuat representasi kepada Ketua Pengarah Perhubungan Perusahaan ('KPPP') di bawah s 20(1) Akta Perhubungan Perusahaan 1967 ('Akta itu') menuntut bahawa mereka telah dibuang kerja tanpa sebab yang berpatutan oleh majikan mereka ('penentang'). Semasa KPPP sedang mengambil tindakan untuk penyelesaian, penentang telah memanggil ketiga-tiga pekerja itu ke pejabatnya di mana penentang telah membuat tawaran pampasan kepada mereka. Penentang mendakwa bahawa pekerja-pekerja itu telah menerima tawaran tersebut. Pekerja-pekerja itu telah menandatangani dokumen menyatakan bahawa mereka tidak akan membuat tuntutan selanjutnya terhadap penentang. Pekerja-pekerja itu, walau bagaimanapun, menyatakan bahawa mereka telah dipaksa menerima pampasan tersebut dan mereka telah memprotes secara lisan apabila mereka diminta menandatangani dokumen itu. Mereka juga mendakwa bahawa mereka telah menulis kepada penentang mengatakan yang mereka menerima pembayaran pampasan itu di bawah protes. KPPP, namun demikian, telah membentangkan laporan beliau kepada Menteri yang telah merujuk representasi itu kepada Mahkamah Perusahaan. Pada masa pendengaran rujukan itu, hanya dua daripada pekerja-pekerja itu ('pemohon') hadir. Penentang menimbulkan bantahan permulaan mengatakan bahawa kerana pemohon telah menerima pampasan, estopel bekerja untuk melarang mereka daripada meneruskan tuntutan mereka. Mahkamah Perusahaan membenarkan bantahan permulaan penentang dan menolak tuntutan pemohon. Pemohon telah memohon kepada Mahkamah Tinggi untuk mendapatkan certiorari membatalkan keputusan Mahkamah Perusahaan dan untuk mendapatkan mandamus mengarahkan Mahkamah Perusahaan untuk mendengar representasi mereka sebagaimana yang telah dirujuk kepadanya oleh Menteri.

Diputuskan, membenarkan permohonan itu:

(1) Jikalau penyelesaian sebenar telah dicapai semasa pertikaian itu sedang diuruskan oleh KPPP di bawah s 20(2) Akta itu, kehendak undang-undang ialah kedua-dua pihak yang bertikai itu mesti menandatangani pernyataan menyatakan apa yang telah dipersetujui oleh mereka. Tidaklah mencukupi yang hanya satu pihak menandatangani pernyataan itu, seperti yang telah berlaku dalam kes ini.

(2) Keterangan diperlukan untuk menunjukkan yang penyelesaian yang dipersetujui itu ialah hasil tindakan yang telah diambil oleh KPPP untuk menyebabkan penyelesaian secara berbaik-baik. Di bawah s 54(2) Akta itu, penyelesaian itu hendaklah ditandatangani di hadapan KPPP yang berkewajipan melihat yang penyelesaian itu dicapai dengan adil dan saksama dan kedua-dua pihak itu telah menandatangani dokumen itu dengan sukarela. Dalam keadaan yang ada, dokumen yang telah ditandatangani hanya oleh pekerja-pekerja tersebut tidak boleh dikemukakan di sisi undang-undang kepada Mahkamah Perusahaan.

(3) Satu pemeriksaan Bahagian VII Akta itu menunjukkan bahawa prosedur yang kena diikut oleh Mahkamah Perusahaan bukanlah prosedur yang terpakai secara tegas pada mahkamah undang-undang seperti yang diperuntukkan dalam Akta Keterangan 1950. Di bawah s 30(5) Akta itu, Mahkamah Perusahaan mesti bertindak mengikut ekuiti, kesedaran batin yang baik dan merit substansial kes tanpa memberi perhatian kepada selok-belok teknikal dan bentuk undang-undang. Peraturan teknikal seperti estopel, had masa, kelengahan membuat tuntutan (laches) dan akuiesens kecuali selainnya diperuntukkan dalam Akta itu, tiada bertempat dalam adjudikasi perusahaan dan tidak harus dibenarkan digunakan untuk mengecewakan tuntutan yang adil dan wajar.

(4) Mahkamah Perusahaan oleh kerana itu telah melakukan kesilapan di sisi undang-undang yang menyentuh bidang kuasanya dengan membenarkan bantahan permulaan penentang atas rayuan teknikal estopel.]

Cases referred to

1 *Workmen of Subong Tea Estate v The Outgoing Management of Subong Tea Estate & Anor* (1964) 5 SCR 602 (folld)

2 *Guest, Keen, Williams Pte Ltd, Calcutta v PJ Sterling & Ors* AIR 1959 SC 1278 (folld)

Legislation referred to

Industrial Relations Act 1967 ss 20(1), (2), (3), 25, 28, 29, 30(5), 33(3), 54, Part VII

Industrial Court Rules 1967

Industrial Disputes Act 1947 s 10(1)(d) [Ind]

B Lobo (*Lobo & Associates*) for the applicants.

Vijay Kumar (*Albar Zulkifly & Yap*) for the respondent.

Eusoff Chin J: A representation had been made to the Director General of Industrial Relations ('DGIR') under s 20(1) of the Industrial Relations Act 1967 ('the Act') by three workmen who claimed to have been dismissed without just cause and excuse by their employer ('the respondent') vide termination notice dated 5 May 1987. The three workmen received their wages for May 1987.

In accordance with s 20(2) of the Act, the DGIR took steps to bring about an expeditious settlement of the complaint. It is not disputed that while such steps were being taken by the DGIR and while negotiations were going on, the respondent had called the three workmen to its office premises on 20 July 1987 where the respondent offered, and the three workmen accepted payments of compensation. The personnel administrative officer of the respondent made the three workmen sign documents stating that they would not make any further claims on the respondent in respect of the termination of their employment. However, the three workmen claimed that they were forced to accept the compensation, and that they had orally protested when asked to sign the documents. On 12 August 1987, they wrote to the respondent to say that they had accepted the payments of compensation under protest.

After paying the compensation to the workmen, on 25 July 1987, the respondent wrote to the DGIR to inform him of what had happened. The DGIR asked the workmen whether they had agreed to the settlement, and this resulted in the three workmen writing to the respondent the letter mentioned above dated 12 August 1987. The DGIR then submitted his report to the Minister, who being satisfied that no settlement was likely to be reached between the parties, referred the representation under s 20(3) of the Act to the Industrial Court for an award. At the hearing of the reference at the Industrial Court, the first two claimants ('the applicants') were present; the third claimant could not be traced. The counsel for the respondent raised before the Industrial Court a preliminary objection stating that since the two workmen (the applicants) had accepted compensation, estoppel operated to stop them from proceeding with their claims for having been dismissed without just cause or excuse. The Industrial Court considered a number of its own past decisions, and a few Indian Supreme Court judgments on this point, and it upheld the preliminary objection and dismissed the applicants' claim. Hence this application for an order of certiorari to quash the Industrial Court's decision.

It is to be noted that the DGIR was fully aware of the payment of compensation to, and the acceptance of it by each applicant. In spite of that, the DGIR had refused to treat the dispute/representation as settled, and instead proceeded to submit his report to the Minister, which report was only necessary to be made if the DGIR was of the opinion that the representation was unlikely to be settled.

In my judgment, s 54 of the Act is a provision to be considered by the Industrial Court when making the ruling in upholding the preliminary objection and rejecting the claim. Had there been a genuine settlement reached while the dispute was being dealt with by the DGIR under s 20(2) of the Act, the legal requirement is that both parties to the dispute must sign a statement stating what they had agreed to. It is not sufficient that only one party signed the statement, as happened in this case.

There must be evidence to show that such agreed settlement was the result of the steps taken by the DGIR in his effort to effect an amicable settlement. The wording of s 54(2) appears to show that the settlement has to be signed before the DGIR, whose duty is to see that the settlement as stated in the document to be signed by both the parties to the dispute, has been reached fairly, and that the parties have so signed the document voluntarily. Further, the provision of s 54(3) of the Act, makes it clear that even if there had been offers and counter-offers made without prejudice by the parties to the dispute in the course of the negotiation under s 20(2) of the Act, the evidence of such offer or counter-offer cannot be given in any proceedings before the Industrial Court, and if given, must be ignored by that court.

Section 54 of the Act states:

> (1) Where a trade dispute relates to matters as to which negotiation or conciliation proceedings have taken place under this Act, no evidence shall be given in the proceedings before the Court as to such negotiation or conciliation proceedings *other than* a written statement in relation thereto agreed to and signed by the parties to the dispute.
> (2) In a proceeding before the Court on a reference to the Court under section 20(3), no evidence shall be given of any proceeding before the Director General under section 20(2) *other than* a written statement in relation thereto agreed to and signed by the parties to the reference.
> (3) No evidence shall be given in proceedings before the Court with regard to any offer relating to any matter connected with the trade dispute made without prejudice by any person or trade union except with the consent of that person or trade union. (Emphasis added.)

In this case, since the DGIR was still trying to effect a settlement between the parties under s 20(2) of the Act, had there been a genuine offer of settlement and a voluntary acceptance of it by the two applicants, the parties should have gone to the DGIR, and then prepared a statement of their settlement of the dispute which statement should have been signed by the parties to the dispute. But what had happened here is different. The documents containing the purported settlement were each signed by the workman but not signed by anyone on behalf of the employer (the respondent). This is contrary to the requirement of s 54(2) of the Act. Under the circumstances, such a document cannot be one which can legally be tendered to the Industrial Court and if tendered, the Industrial Court should have rejected it since it had not been made in compliance with s 54(2) of the Act.

Estoppel is a technical plea which may be applied in proceedings in civil courts. In *Workmen of Subong Tea Estate v The Outgoing Management of Subong Tea Estate & Anor*,[1] eight workmen were given notices on 31 August 1959 terminating their services with effect from 1 October 1959. The eight workmen were also paid retrenchment compensation. The union representing the workmen protested against the retrenchment in question. The dispute in regard to the impugned retrenchment was referred by the Governor of Assam to the Industrial Tribunal for adjudication under s 10(1)(d) of the Industrial Disputes Act 1947. It was argued that the workmen had

A been paid their proper retrenchment compensation, and as such they were not entitled to any further relief in their proceedings before the tribunal. The Indian Supreme Court held that the acceptance of retrenchment compensation by the eight workmen should not be held to create a bar against them in the present proceedings for the reason that such technical pleas are not generally entertained in industrial adjudication.

B Part VII of our Industrial Relations Act 1967 relate to proceedings in the Industrial Court. An examination of the provisions contained in the Act shows that the procedures to be followed by the Industrial Court are not those which are strictly applicable to a court of law as laid down in the Evidence Act 1950. Sections 28, 30(5) and 33(3) of the Act state:

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> 28 Save as otherwise expressly herein provided and subject to any regulations that may be made in that behalf, the President may regulate the procedure and proceedings of the Court as he thinks fit and, with the approval of the Minister, make rules governing such procedure and proceedings.
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> 30(5) The Court shall act according to equity, good conscience and the substantial merits of the case *without regard to technicalities* and legal form.

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> 33(3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard. (Emphasis added.)

What is required of the Industrial Court is that it must observe the rules of natural justice in the conduct of inquiries before it, some of which are:

E (a) that a party should have due notice of the proceedings;
(b) that he should have the opportunity of adducing all relevant evidence on which he relies;
(c) that the evidence of the opposite side should be taken in his presence;
(d) that he should be given the opportunity of cross-examining the witnesses examined by the opposite party; and

F (e) that no material should be relied on against him without his having been given an opportunity of explaining the same.

Rules governing the procedure and proceedings in the Industrial Court have been made under s 25 (now s 28) of the Act (see the Industrial Court Rules 1967). Other powers of the Industrial Court in relation to any

G proceeding before it, are as those enumerated in s 29 of the Act.

It is therefore to be observed that in view of the provisions of s 30(5) of the Act, the Industrial Court must act according to equity, good conscience and the substantial merits of the case *without regard* to technicalities and legal form. Technical rules such as estoppel, limitation, laches, acquies-

H cence, etc (unless otherwise provided for in the Act) have no place in industrial adjudication and they should not be allowed to be invoked for defeating claims which are just and proper.

In *Guest, Keen, Williams Pte Ltd, Calcutta v Pf Sterling & Ors*,[2] at p 1284, the Supreme Court of India held that in dealing with industrial disputes, the application of technical legal principles should, as far as is reasonably

I possible, be avoided. The tribunal should be slow and circumspect in applying the technical principles of acquiescence and estoppel in the adjudication of industrial disputes. If a dispute is raised after a considerable delay which is not reasonably explained, the industrial tribunal would

undoubtedly take that fact into account in dealing with the merits of the dispute. But unless the relevant facts clearly justify such a course, it would be inexpedient to throw out the reference on preliminary technical objection of the kind raised by the appellant.

For the reasons given, I find that the Industrial Court had committed an error of law affecting its jurisdiction by upholding the preliminary objection on a technical plea of estoppel, and thus refusing to hear a reference properly made to it by the Minister for its determination.

I allow this application, and make the following orders:

(1) an order of certiorari to remove into the High Court for the purpose of it being quashed the Industrial Court Award No 83 of 1990 dated 3 April 1990;
(2) an order of mandamus directed to the Industrial Court to hear and determine according to law the applicants' representations over their unjust dismissal referred to the said court by the Minister under s 20(3) of the Act, by a different division from that which made the said Award No 83 of 1990; and
(3) costs to the applicants.

Application allowed.

Reported by Wong Kian Kheong